

In the High Court of Punjab and Haryana at Chandigarh

Criminal Appeal No.507 DB of 1998
Date of decision: 1.9.2008

Labha and another

.....Appellants

Versus

State of Punjab

.....Respondent

**CORAM: HON'BLE MR.JUSTICE JASBIR SINGH
HON'BLE MRS. JUSTICE SABINA**

Present: Ms.G.K.Mann, Advocate,
for the appellants.

Mr.Rajesh Bhardwaj, DAG, Punjab.

JUDGMENT

SABINA, J.

Labha and Kuldip Singh @ Keepa have filed this appeal challenging their conviction and sentence under Section 302/34/450 IPC vide impugned judgment dated 11.9.1998 passed by Sessions Judge, Amrisar.

Prosecution story, in brief, is that on 24.7.1996 the complainant took his dinner along with his father Jiwan Dass, younger brother Surinder Kumar and cousin brother Rajinder Mohan. Thereafter, the complainant along with Surinder Kumar and Rajinder Mohan slept on the cots on the roof of the rooms, whereas, Jiwan Dass slept on a cot on the roof of the varandah, opposite to them. An electric bulb was on in the courtyard. About 10.30/11.00 p.m.

complainant woke up on hearing alarm raised by his father and saw that Labha armed with *datar* was giving blows on the face of his father while he was sleeping. Kuldip Singh @ Keepa was empty handed and had held Jiwan Dass from his legs. Complainant raised hue and cry which woke up Surinder Kumar and Rajinder Mohan. Labha gave 4-5 *datar* blows on the face of Jiwan Dass. When they raised alarm accused fled away from the spot with their weapon. Motive behind occurrence is that accused used to purchase goods from their shop on credit and they had been abused by Jiwan Dass on account of some payment. Due to this reason they had murdered him in connivance with each other. Out of fear and trauma, complainant did not report the matter to the police during night. The matter was reported to the police in the morning and statement of complainant was recorded at about 9.00 a.m. on 25.7.1996. On the basis of the statement of the complainant formal FIR No. 116 dated 25.7.1996 was registered by the police of police station Lopoke.

Inspector Gurbhinder Singh visited the spot along with the complainant. The dead body of Jiwan Dass was recovered from the cot on the roof of the veranda. He prepared inquest report with regard to the recovered dead body and lifted blood stained earth from the spot and recorded statements of the witnesses. Rough site plan was prepared and the dead body was sent for post mortem examination. Dr. Ashok Chanana conducted the post mortem examination on the dead body of Jiwan Dass on 26.7.1996 at about

8.00 a.m. and found following injuries on the person of the deceased:-

1. A horizontal incised wound 6 x 1.5 cm with clotted blood was present on the front of the nose in its middle. The nose was divided into two portions. Clotted blood was present at the site.
2. A horizontal incised wound 7 x 1.4 cm with clotted blood was present on the face, 3 cm below injury No.1.
3. An incised wound 1.6 x 2 cm was present from the right cheek upto the left ear. It passed through the upper lip. Clotted blood was present at the site. The mouth contained 50 ml. of fluid and clotted blood.
4. An incised wound obliquely placed 7x 1.4 cm with clotted blood was present on the left mandibular region. The underlying mandible was fractured. Clotted blood was present at the site.
5. An incised wound obliquely placed 3 x 1.2 cm with clotted blood was present on the back of left middle finger.

He further opined that injuries were ante mortem in nature and cause of death was shock as a result of cumulative effect of injuries which were sufficient to cause death in the ordinary course of nature. The time between injuries and death was rapid and between death and postmortem examination was about 24 to 36 hours.

Accused were arrested on 2.8.1996. During interrogation of accused Labha on 4.8.1996 blood stained *datar* was got recovered on the basis of his disclosure statement. After completion of investigation and necessary formalities accused were sent up for trial. Charge was framed against them under Section 302/34 and 450 IPC on 30.4.1997 to which they did not plead guilty and claimed trial.

At the trial, prosecution in order to prove its case examined Dr.Ashok Chanana (PW-1), Narinder Kumar (PW-2), Rajinder Mohan (PW-3) and Gurbhinder Singh (PW-4). After the close of prosecution evidence accused, when examined under Section 313 Cr.P.C., prayed that they were innocent and have been falsely involved in this case.

Learned trial Judge, Amritsar believed the prosecution version and held the accused guilty of the charge framed against them. Accused Labha was sentenced to undergo imprisonment for life and fine of Rs.1,000/- under Section 302 IPC and rigorous imprisonment for three years with fine of Rs.500/- under Section 450 IPC. Accused Kuldip Singh @ Keepa was sentenced to undergo imprisonment for life and fine of Rs.1,000/- under Section 302/34 IPC and rigorous imprisonment for three years with fine of Rs.500/- under Section 450 IPC. Hence, the present appeal.

In appeal, it has been argued that it was a case of blind murder and the appellants had been falsely involved in this case.

The presence of five witnesses at the spot was doubtful. There was inordinate delay in lodging the FIR, which made the prosecution case untrustworthy. The names of the eye witnesses were not mentioned in the inquest report nor the weapon used was described therein.

Learned State counsel, on the other hand, has submitted that the presence of the complainant could not be doubted at the spot being son of the deceased. The presence of the remaining witnesses can also not be doubted at the spot. There was no unexplained delay in lodging the FIR.

Present case rests on an eye witness account. Complainant is the son of the deceased and his presence in the house i.e. place of occurrence cannot be doubted. Rajinder Mohan (PW-3) is the cousin brother of the complainant and his presence at the spot also cannot be doubted. Complainant, while appearing in witness box as PW-2, has deposed as per his statement in the FIR, which is duly corroborated by Rajinder Mohan (PW-3). Complainant woke up on hearing alarm raised by his father, whereas, Rajinder Mohan (PW-3) woke up on alarm raised by the complainant. Both the said witnesses witnessed the occurrence. The occurrence had allegedly taken place at about 10.30/11.00 a.m. and the matter was reported to the police in the morning. As per the Investigating Officer, the complainant had met him at about 7.30 a.m. on 25.7.1996 and, thereafter, he recorded his statement. After recording of the FIR, the special report was immediately sent to the

Magistrate, which was received by him at 11.15 a.m. The complainant must have been in a trauma and panic when he saw his father being murdered. Apparently it took some time for the complainant to report the matter to the police regarding murder of his father. The complainant has explained the delay that out of fear they did not move out anywhere at night and next day he along with Surjit Singh, Sarpanch of the village left to lodge the FIR.

At this stage, it would be significant to examine the site plan Exhibit PJ. A perusal of the same reveals that dead body of Jiwan Dass was lying on a cot at Mark 'A' on the veranda, whereas, the complainant and eye witnesses were sleeping on the roof of the rooms opposite the veranda. An electric bulb was on at point 'E' near the place where the complainant and eye witnesses were sleeping. There is another aspect also. The complainant in his cross-examination deposed that roof of the house, where they were sleeping, could be 12 ft. high from the ground, whereas, roof of the house where his father was sleeping might be 9 ft. high. This appears plausible because generally roof of rooms is at a higher level than that of veranda. A perusal of the site plan Ex. PJ as well as from the cross-examination of complainant it transpires that the occurrence could be witnessed by the eye witnesses from the place where they were sleeping and immediately it may not have been possible for them to rescue Jiwan Dass. It strengthens the prosecution case that the witnesses were present at the spot and

had witnessed the occurrence. The moment all the eye witnesses woke up and raised alarm, accused fled away from the spot.

Admittedly, Jiwan Dass was sleeping at the time of occurrence. Injuries have been inflicted by accused Labha with the knife (*datar*) on the face of the deceased. The ocular version in this regard is duly corroborated by the medical evidence. Since the deceased was sleeping when the occurrence took place, he could not have offered any resistance at that time and, as such, it was not necessary for any person to have held him from his legs. Rather this would have woken up the deceased before he was attacked. Apparently, the possibility that accused Kuldip Singh @ Keepa has been falsely involved in this case cannot be ruled out. Especially when there was no occasion for him to restrain a sleeping man. His presence at the spot is doubtful. However, so far as accused Labha is concerned, the statements of the witnesses qua his infliction of injuries on the person of the deceased are reliable and inspire confidence. The weapon used by accused Labha was recovered on the basis of his disclosure statement. As per the report of serologist knife was found to be stained with human blood.

The fact that the names of the eye witnesses are not mentioned in the inquest report Exhibit PC is not material as Surjit Singh, Ex-Sarpanch and Samma Singh had merely identified the dead body, as per column No.4. It was not necessary for the Investigating Officer to have mentioned the names of all the other

persons in the said column. Moreover, the inquest report was prepared after the statement of the complainant was recorded, who had duly named the assailants in his statement. As such, the fact that dead body was not identified by the PWs' is not significant.

In column No.12 of the inquest report it had been mentioned that the injuries had been caused with a sharp edged weapon. Merely because this weapon had not been specifically named in the said column does not damage the case of the prosecution which is otherwise duly established from the ocular and medical version qua appellant Labha. Even otherwise it is a settled law that any lapse committed by the Investigating Officer cannot be said to be fatal to the prosecution case if otherwise established. Although complainant has spelt out motive to commit the crime by the accused but in a case of eye witnesses account, motive loses its significance.

After going through the entire evidence on record, we are of the opinion that the prosecution has been successful in proving its case against appellant Labha and his conviction and sentence are liable to be upheld. So far as appellant Kuldip Singh @ Keepa is concerned, he is liable to be acquitted by giving him benefit of doubt as possibility of his having been falsely involved in this case cannot be ruled out.

Accordingly, this appeal is partly allowed. Appeal qua appellant No.1 Labha is dismissed and his conviction and sentence

under Section 302 and 450 IPC is maintained. Appeal qua appellant No.2 Kuldip Singh @ Keepa is allowed and he is acquitted of the charge framed against him.

**(SABINA)
JUDGE**

**(JASBIR SINGH)
JUDGE**

September 01, 2008
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